

RESPONSE TO RESTRICTION REQUIREMENT

In the Office Action dated February 20, 2008, the Examiner issued a restriction requirement under 35 U.S.C. § 121 alleging that the application claims more than one invention. Specifically, the Examiner identifies the inventions as being the following:

Group I, consisting of claims 1-41, drawn to a method of treating, preventing or reducing the risk of developing a depressive disorder comprising administering a depressive-disorder effective amount of a composition to an area of skin of the subject for delivery of a steroid in the testosterone synthetic pathway to blood serum of the subject wherein the composition comprises a steroid in the testosterone synthetic pathway, a penetration enhancing agent, a thickening agent, and a lower alcohol, and a therapeutic agent, classified in class 514, subclass 170; and

Group II, consisting of claim 42, drawn to a pharmaceutical composition comprising steroid in the testosterone synthetic pathway, a penetration enhancing agent, a thickening agent, a lower alcohol and a therapeutic agent, classified in class 514, subclass 171.

Applicant elects claims 1-41 of Group I without traverse for prosecution and withdraws claim 42 without prejudice.

In addition, the Examiner issued an election of species requirement alleging that the application contains claims to patentably distinct species. The Examiner stated that Applicant is required to elect: (1) a single disclosed species of a steroid in the testosterone synthetic pathway;

(2) a single disclosed species of a penetration enhancer; (3) a single disclosed species of thickening agent; (4) a single disclosed species of lower alcohol; and (5) a single disclosed species of therapeutic agent for initial prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant accordingly elects (1) testosterone as the steroid in the testosterone synthetic pathway, (2) isopropyl myristate as the penetration enhancer, (3) polyacrylic acid as the thickening agent, (4) ethanol as the lower alcohol, and (5) methyltestosterone as the therapeutic agent, pursuant to 37 C.F.R. § 1.146. Therefore, the claims which read on the elected species are claims 1-41.

The foregoing election is made without prejudice to Applicant's right to claim the subject matter of all non-elected claims in this or any related application. No new matter is added and no change in inventorship is believed to result from the election.

CONCLUSION

Applicant submits that the presently pending claims are in condition for allowance and requests early and favorable consideration.

Respectfully submitted,

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